

Rochester Tel Center
180 South Clinton Avenue
Rochester, New York 14646 0995

716 777 1028
Fax: 716 546 7823

Michael J. Shortley, III



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BY OVERNIGHT MAIL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 93-22

Dear Mr. Caton:

Enclosed for filing please find an original plus nine (9) copies of the Comments of Rochester Telephone Corporation in the above-captioned proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

cc: International Transcription Service

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Policies and Rules Implementing
the Telephone Disclosure and
Dispute Resolution Act

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CC Docket No. 93-22

DOCKET FILE COPY ORIGINAL

COMMENTS OF ROCHESTER
TELEPHONE CORPORATION

Rochester Telephone Corporation ("Rochester") submits these comments in response to the Commission's Further Notice in this proceeding.¹ While Rochester agrees with the Commission's conclusion that certain information services providers are attempting to evade the Commission's regulations governing pay-per-call services,² the Commission should not require common carriers to act as the Commission's enforcement arm. The proposed regulations do this in one principal respect -- by prohibiting common carriers from billing subscribers for presubscribed information services "without **evidence** of a written agreement."³ This proposal is unreasonable and the Commission should decline to adopt it.

¹ *Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, CC Dkt. 93-22, Order on Reconsideration and Further Notice of Proposed Rule Making, FCC 94-200 (released Aug. 31, 1994) ("Further Notice").

² Further Notice, ¶ 25.

As the Commission describes -- and as Rochester's own experience confirms -- certain information services providers appear to be evading the regulations that prohibit the use of the 800 service access code for pay-per-call services in the absence of a valid presubscription or comparable arrangement or in conjunction with the use of a commercial credit card.

³ *Id.*, ¶ 29 (emphasis added).

Common carriers may not even know that a particular 800 number -- which may be used for presubscribed pay-per-call services -- is even devoted to that purpose until well after the fact, if at all. Thus, the proposed rule leaves common carriers with two untenable choices -- asking **all** 800 providers for evidence of any such written agreements with subscribers to any information services that they may be offering or risk running afoul of Commission regulations. The first alternative is impractical and would alienate 800 customers that offer services in a manner consistent with the Commission's rules. This approach effectively burdens innocent third parties with the expense of policing the conduct of those that choose to skirt the Commission's rules. The second alternative is unfair. The Commission should not subject common carriers to the risk of potential liability on the basis of third-party conduct about which they may not even be aware.

Rather than attempt this roundabout approach, the Commission should adopt a simpler solution -- namely, limit the use of the 800 service access code to presubscribed information services billed to a recognized commercial credit card.⁴ By so doing, the Commission may virtually eliminate the controversy regarding whether a particular subscriber has entered into a valid presubscription arrangement with a particular information services provider.⁵ This approach would also enforce the distinction that consumers have come to expect between 800 (*i.e.*, toll-free) calls and 900 (pay-per-call)

⁴ See *id.*, ¶ 31 n.40.

⁵ The Commission would also reduce substantially the number of complaints regarding 800 information services. See *id.*, ¶ 24 n.34.

calls. Adoption of such a rule would also avoid placing common carriers in the business of policing their customers' business affairs.⁶

For the foregoing reasons, the Commission should act upon the proposals contained in the Further Notice in a manner consistent with the comments set forth herein.

Respectfully submitted,



Michael J. Shortley, III

Attorney for Rochester
Telephone Corporation

180 South Clinton Avenue
Rochester, New York 14646
(716) 777-1028

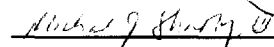
October 7, 1994

⁶

The Commission should, however, permit common carriers -- consistent with any applicable tariff provisions -- to reassign 800 information services providers to the 900 service access code upon obtaining reasonable evidence that such providers are offering their information services in a manner contrary to Commission regulations. The Commission should consider consumer complaints *prima facie* evidence of violation of Commission regulations.

Certificate of Service

I hereby certify that, on this 7th day of October, 1994, copies of the foregoing Comments of Rochester Telephone Corporation were served by first-class mail, postage prepaid, upon the parties on the attached service list.

A handwritten signature in cursive script, reading "Michael J. Shortley, III", is written over a horizontal line.

Michael J. Shortley, III

City of New York
Dept. of Telecommunications and
Energy
75 Park Place
6th Floor
New York, NY 10007

Indiana Utility Regulatory Comm.
913 State Office Building
Indianapolis, IN 46204-2284

Ken McEldowney
Consumer Action
116 New Montgomery
Suite 233
San Francisco, CA 94105

Gregory M. Casey
Telosphere-Wiltel
655 W. Grand Avenue
Suite 300
Elmhurst, IL 60126

Brad E. Mutschelknaus
Rachel J. Rothstein
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Howard J. Braun
Rosenman & Collin
1300 19th Street, NW
Washington, DC 20036

Steven J. Metalitz
Angela Burnett
Information Industry Association
555 New Jersey Avenue, NW
Suite 800
Washington, DC 20001

Josephine S. Trubek
Rochester Telephone Corp.
Rochester Tel. Center
180 South Clinton Avenue
Rochester, NY 14646-0700

Amy S. Gruss
NYCOM Information Services, Inc.
2701 Summer Street #200
Stamford, CT 06905

Ronald B. Mallard
Fairfax County Consumer Affairs
12000 Government Center Parkway
Fairfax, VA 22035

Frank S. Levin
Hall, Dickler, Lawler, Kent &
Friedman
460 Park Avenue
New York, NY 10022-1906

Celia Nogules
Pacific Telesis
1275 Pennsylvania Avenue, NW
Fourth Floor
Washington, DC 20004

Floyd S. Keene
Michael S. Pabian
Ameritech Operating Cos.
30 South Wacker Drive
Suite 3900
Chicago, IL 60606

William B. Barfield
Richard M. Sbaratta
Helen A. Shockey
BellSouth Corporation
4300 Southern Bell Center
675 West Peachtree Street, NE
Atlanta, GA 30375

Patrick A. Lee
William J. Balcerski
NYNEX
120 Bloomingdale Road
White Plains, NY

Chris Sutherland
Promotion Marketing Association
of America, Inc.
322 Eighth Avenue
New York, NY 10001

John M. Goodman
Charles H. Kennedy
Bell Atlantic Telephone Cos.
1710 H Street, NW
Washington, DC 20006

Francine J. Berry
R. Steven Davis
Peter H. Jacoby
AT&T
295 North Maple Avenue
Room 3244J2
Basking Ridge, NJ 07920

Randy Bakewell
Missouri Office of the Public
Counsel
P.O. Box 7800
Jefferson City, MO 65102

Linda F. Goldner
National Consumers League
815 15th Street, NW
Suite 928N
Washington, DC 20005

Mary J. Sisak
Donald I. Elardo
MCI Telecommunications Corp.
1133 19th Street, NW
Washington, DC 20036

Richard Blum
State of Connecticut
Office of the Attorney General
55 Elm Street, 7th Floor
Hartford, CT 06106

John C. Thomas
7911 Dartworth Drive
Parma, OH 44129

William J. Free
Richard C. Hartgrove
Diana J. Harter
Southwestern Bell Telephone Co.
1010 Pine Street
Room 2114
St. Louis, MO 63101

B.J. Stonebraker
Cincinnati Bell Telephone Co.
201 E. Fourth Street
102-300
P.O. Box 2301
Cincinnati, OH 45201

Philip F. McClelland
Pennsylvania Office of
Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

The National Association of State
Utility of Consumer Advocates
1133 15th Street, NW
suite 575
Washington, DC 20005

Andrew D. Lipman
Swidler & Berlin, Chartered
3000 K Street, NW
Suite 300
Washington, DC 20007

John F. Sturm
Claudia M. James
Brigitte M. Rouson
Newspaper Association of
America
Dulles Airport - P.O. Box 17047
Washington, DC 20004

Richard W. Wiley
Michael Yourshaw
Katherine A. King
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Edwin N. Lavergne
Rodney L. Joyce
Jay S. Newman
Ginsburg, Feldman and Bress,
Chartered
1250 Connecticut Avenue, NW
Washington, DC 20036

Sam Antar
Kristin C. Gerlach
Capital Cities/ABC, Inc.
77 West 66th Street
New York, NY 10023

Earl Nicholas Selby
420 Florence Street
Suite 200
Palo Alto, CA 94301

Danny E. Adams
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Barbara Berger Opatowsky
Better Business Bureau of
Metropolitan New York, Inc.
257 Park Avenue South
New York, NY 10010

Christopher Herman
610 North Carolina Avenue, SE
Washington, DC 20003

National Association of Consumer
Agency Administrators
1010 Vermont Avenue, NW
Suite 514
Washington, DC 20005

Mary Sue Terry
Gail Starling Marshall
Office of the Attorney General
Commonwealth of Virginia
101 North 8th Street
Richmond, VA 23219

Edward L. Petrini
William H. Chambliss
Office of the Attorney General
Commonwealth of Virginia
101 North 8th Street
Richmond, VA 23219

Veronica M. Ahern
Nixon, Hargrave, Devans & Doyle
One Thomas Circle, NW
Suite 800
Washington, DC 20554

Jane A. Fisher
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Robin Pishel Ancona
Marilyn Moore
Michigan PSC
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Richard McKenna, HQE03J36
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092

GTE
1850 M Street, NW
Suite 1200
Washington, DC 20036

Leon M. Kestenbaum
Lesla Lehtonen
United Telecommunications, Inc.
1850 M Street, NW
11th Floor
Washington, DC 20036

Michael B. Fingerhut
Marybeth M. Banks
Sprint Corporation
1850 M Street, NW
11th Floor
Washington, DC 20036

Craig T. Smith
Sprint Corporation
P.O. Box 11315
Kansas City, MO 64112

Genevieve Morelli
Competitive Telecommunications
Association
1140 Connecticut Avenue, NW
Suite 220
Washington, DC 20036

Robert J. Aamoth
Reed, Smith, Shaw & McClay
1200 18th Street, NW
Washington, DC 20036

David Cosson
L. Marie Guillory
National Telephone Cooperative
Association
2626 Pennsylvania Avenue, NW
Washington, DC 20037

The Honorable Bart Gordon
103 Cannon Building
Washington, DC 20515

Diane Dean
State of NY DPS
Three Empire State Plaza
Albany, NY 12223

John Richeson
Tel Control, Inc.
P.O. Box 4087
Huntsville, AL 35815-4087

Carol F. Sulkes
Central Telephone Co.
O'Hare Plaza
8745 Higgins Road
Chicago, IL 60631

Hubert H. Humphrey, III
Gary K. Cunningham
State of Minnesota
340 Bremer Tower
Seventh Place & Minnesota St.
St. Paul, MN 55101

Linda C. Smith
Veronica A. Smith
John F. Povillaitis
Pennsylvania PUC
P.O. Box 3265
Harrisburg, PA 17120

Joel R. Dichte
Selham, Klein & Zelman
Associated of Information
Providers of New York
485 Madison Avenue
New York, NY 10022

George C. Davis
United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-1100

Robert J. Del Tufo
State of New Jersey
Department of Law and Public
Safety
Hughes Justice Complex
GN 080
Trenton, NJ 08625-0080

Paul Rodgers
Charles D. Gray
James Bradford Ramsay
NARUC
1102 ICC Building
P.O. Box 684
Washington, DC 20044

Eugene G. Hanes
Alabama PSC
P.O. Box 991
Montgomery, AL 36101-0991

Mary Newmeyer
Alabama PSC
P.O. Box 991
Montgomery, AL

P. Michael Cole
Patton, Latham, Legge & Cole
315 Market Street
P.O. Box 470
Athens, AL 35611-0470

Ann P. Morton
Swidler & Berlin
3000 K Street, NW
Suite 300
Washington, DC 20007

Richard Mehr
Music Access, Inc.
90 Fifth Avenue
Brooklyn, NY 11217

Ian D. Volner
J. Brian DeBoice
Cohn and Marks
1333 New Hampshire Avenue, NW
Suite 600
Washington, DC 20036

Rochelle D. Jones
Southern New England Telephone
227 Church Street
New Haven, CT 06510

Robert J. Butler
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Joel B. Dichter
Jane B. Jacobs
Seham, Klein and Zelman
485 Madison Avenue
New York, NY 10022

Walter Steimel, Jr.
Fish & Richardson
601 13th Street, NW
Fifth Floor North
Washington, DC 20005

Glenn B. Manishin
Blumenfeld & Cohen
1615 M Street, NW
Suite 700
Washington, DC 20036

National Association of Consumer
Agency Administrators
1010 Vermont Avenue, NW
Suite 514
Washington, DC 20005

William J. Cowan
NYDPS
Three Empire State Plaza
Albany, NY 12223

Albert H. Kramer
Robert F. Aldrich
Douglas E. Rosenfeld
Keck, Mahin & Cate
1201 New York Avenue, NW
Penthouse Suite
Washington, DC 20005

John W. Hunter
McNair & Sanford, P.A.
1155 15th Street, NW
Washington, DC 20005

Peter Arth, Jr.
Edward W. O'Neill
Timothy E. Treacy
People of the State of California and
the Public Utilities Commission of
the State of California
505 Van Ness Avenue
San Francisco, CA 94102

Lee A. Marc
Summit Telecommunications Corp.
1640 South Sepulveda Blvd.
Suite 207
Los Angeles, CA 90025

William W. Burrington
The National Association for
Information Services
1250 Connecticut Avenue, NW
Suite 600
Washington, DC 20036

International Transcription Service
2100 M Street, NW
Suite 140
Washington, DC 20036